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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/890,569	07/31/2001	Thomas Blakeley	604.14-US1	4695
35856	7590	12/20/2004	EXAMINER	
LAVA GROUP LAW BY SMITH & FROHWEIN, LLC P.O. BOX 88148 ATLANTA, GA 30356			GRAHAM, CLEMENT B	
			ART UNIT	PAPER NUMBER
			3628	

DATE MAILED: 12/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

09/890,569

**Applicant(s)**

BLAKELEY ET AL.

**Examiner**

Clement B Graham

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address.

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 29 September 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |                                                                                                                        |                                                                                         |
|------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                            | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____                                                |

#### **DETAILED ACTION**

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 09/29/2004 has been entered.
2. Claims 1-12 remained pending and claim 13 has been added.
3. Abstract was received and accepted.
4. Applicant is reminded that the Examiner does not change docket numbers and should contact Mrs Jackie Waldo, her phone number is 703-308-3902.

#### ***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:  
The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
6. Claims 1-3, 9, and 13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In particular, Claims 1-3, and 13, recites the word [" narrowly "].

However this language fails to distinctly claim Applicant's invention because the scope of the claim is unclear. Moreover the specification fails to clarify, the meaning of the limitation. Appropriate correction is required.

In particular, Claim 9, recites the word [" substantially"].

However this language fails to distinctly claim Applicant's invention because the scope of the claim is unclear. Moreover the specification fails to clarify, the meaning of the limitation. Appropriate correction is required.

#### ***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:  
(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the

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subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1-13, are rejected under 35 U.S.C. 103(a) as being unpatentable over Von Kohorn (Hereinafter Kohorn U.S. PUB No: No 2001/0003099 A1) in view of Przygienda (U. S. Patent No 5, 966, 380).

As per claim 1-3, 12, Von Kohorn teaches a method of virtual prospecting comprising;

an advertiser narrowly making a selection of a prospect and a commercial and the term "host" is intended to include an on-stage and an off-stage announcer, master of ceremonies, program director, guest host and celebrities, announcers of commercials and any other individual associated with the program or appointed to carry out one or more of the activities enumerated herein. It also is intended to include the individuals engaged in the operation of formulating a message or program for broadcasting on behalf of an advertiser, manufacturer, store or sponsor. (See column 9 lines paragraph 00115 and column 4 paragraph 0030).

Von Kohorn fail to explicitly teach identifying the selection to a third party, the third party electronically communicating the selected commercial to the selected prospect the selected prospect making a response to the selected commercial the third party tracking the response made by the selected prospect and the third party reporting back to the advertiser with information relating to response to the selected commercial.

However Przygienda discloses identifying ("i. e, first node") the selection to a third party ("i. e, second node"), the third party ("i. e, second node") electronically communicating the selected commercial to the selected prospect ("i. e, third node") the selected prospect ("i. e, third node") making (i. e, communicating") a response to the selected commercial (see column 4 lines 36-65 an column 5 lines 1-9) the third party tracking("i.e. "monitoring nodes" "see column 2 lines 45-60") the response made by the selected prospect ("i. e, second node") and the third party("i. e, second node") reporting back to the advertiser ("i. e, first node") with information relating to

response to the selected commercial. (see column 4 lines 36-65 and column 5 lines 1-9).

Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of Von Kohorn to include third party electronically communicating the selected commercial to the selected prospect the selected prospect making a response to the selected commercial the third party tracking the response made by the selected prospect and the third party reporting back to the advertiser with information relating to response to the selected commercial taught by Przygienda in order to provide communication of data among a plurality of devices interconnected and allocation system resources to accomplish efficient data communications.

As per claim 4, Von Kohorn and Przygienda fail to explicitly teach wherein the commercial is an executable file.

However a commercial being an executable file is old and well known in the art.

Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of Von Kohorn and Przygienda to include a commercial as an executable file in order to convert the commercial into an executable file for transmission or access to that executable.

As per claim 5, Von Kohorn discloses wherein the commercial includes an identification code. (see column 61 paragraph 0563).

As per claim 6, Von Kohorn and Przygienda fail to explicitly teach the commercial is communicated to the prospect as an attachment to an e-mail.

However commercial is communication to the prospect as an attachment to an e-mail is old and well known in the art of communication because it provides an efficient and effective means of communicating.

Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of Von Kohorn and Przygienda to include communicating a commercial to a prospect as an attachment to an e-mail because it provides an efficient and effective means of communicating.

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As per claim 7, Von Kohorn and Przygienda fail to explicitly teach the commercial includes a hyperlink to a web site.

However commercial includes a hyperlink to a web site are old well known in the art because the hyperlink is a directory to a web site that provides access to information on places such as the internet.

Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of Von Kohorn and Przygienda to include hyperlink to a web site because the hyperlink is a directory to a web site that provides access to information on places such as the internet.

As per claim 8, Von Kohorn fail to explicitly teach the step of tracking includes determining whether a commercial is opened.

However Przygienda discloses monitoring a node the method comprises the steps of receiving new information about the node. Then, there is the step of comparing the new information about the node with old information about the node. Then, there is the step of updating the old information with the new information by incrementing the old information with the new information. ("i.e. "monitoring nodes" "see column 2 lines 45-60").

Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of Von Kohorn to include tracking includes determining whether a commercial is opened taught by Przygienda in order to monitor information about nodes.

As per claim 9, Von Kohorn fail to explicitly teach the step of tracking includes initiating a substantially synchronous link between the prospect and the advertiser.

However Przygienda discloses communication network comprises a first node. The first node comprises a mechanism for communicating with a second node to which it is connected. The first node also comprises a mechanism for maintaining information about itself, the second node and a third node. The maintaining mechanism is connected to the communicating mechanism. Also, the first node comprises a mechanism for comparing new information received from the second node to old information previously received from the second node and updating the old information

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with new information by incrementing the old information with the new information. (see column 4 lines 36-65 and column 5 lines 1-9)

Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of Von Kohorn to include tracking includes initiating a substantially synchronous link between the prospect and the advertiser taught by Przygienda in order to monitor information between nodes.

As per claim 10, Von Kohorn and Przygienda fail to explicitly teach the substantially synchronous link comprises a telephone call.

However substantially synchronous link comprises a telephone call is old and well known in the art of communication because they provide communication between two parties.

Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of Von Kohorn and Przygienda to include substantially synchronous link comprises a telephone call because they provide communication between two parties.

As per claim 11, Von Kohorn and Przygienda fail to explicitly teach the substantially synchronous link comprises a chat site.

However substantially synchronous link comprises a chat site is old and well known in the art of communication because they provide communication between two parties.

Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of Von Kohorn and Przygienda to include substantially synchronous link comprises a chat site because they provide communication between two parties.

As per claim 13, Von Kohorn fail to explicitly teach a method of virtual prospecting comprising;

an advertiser narrowly making a selection of a prospect and a commercial.

However Von Kohorn discloses the term "host" is intended to include an on-stage and an off-stage announcer, master of ceremonies, program director, guest host and celebrities, announcers of commercials and any other individual associated with the program or appointed to carry out one or more of the activities enumerated herein. It also is intended to include the

individuals engaged in the operation of formulating a message or program for broadcasting on behalf of an advertiser, manufacturer, store or sponsor. (See column 9 lines paragraph 00115 and column 4 paragraph 0030).

Von Kohorn fail to explicitly teach identifying the selection to a third party, the third party electronically communicating the selected commercial to the selected prospect the selected prospect making a response to the selected commercial the third party tracking the response made by the selected prospect and the third party reporting back to the advertiser with information relating to response to the selected commercial.

However Przygienda discloses identifying ("i. e, first node") the selection to a third party ("i. e, second node"), the third party being independent entity from the prospect the third party ("i. e, second node") electronically communicating the selected commercial to the selected prospect ("i. e, third node") the selected prospect ("i. e, third node") making (i. e, communicating") a response to the selected commercial (see column 4 lines 36-65 an column 5 lines 1-9) the third party tracking("i.e. "monitoring nodes" "see column 2 lines 45-60") the response made by the selected prospect ("i. e, second node") and the third party("i. e, second node") reporting back to the advertiser ("i. e, first node") with information relating to response to the selected commercial. (see column 4 lines 36-65 an column 5 lines 1-9).

Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of Von Kohorn to include third party electronically communicating the selected commercial to the selected prospect the selected prospect making a response to the selected commercial the third party tracking the response made by the selected prospect and the third party reporting back to the advertiser with information relating to response to the selected commercial taught by Przygienda in order to provide communication of data among a plurality of devices interconnected and allocation system resources to accomplish efficient data communications.

Conclusion



RESPONSE TO ARGUMENTS

7. Applicant's arguments files on 09/29/04 have been fully considered but they moot in view of new grounds of rejections.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Clement B Graham whose telephone number is 703-305-1874. The examiner can normally be reached on 7am to 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hyung S. Sough can be reached on 703-308-0505. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-0040 for regular communications and 703-305-0040 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-3900.

CG

December 7, 2004

  
FRANTZY POINVIL  
PRIMARY EXAMINER  
44 3628